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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,882	02/21/2002	Ken Kutaragi	450126-04025	2953
<div>7590 04/07/2009</div> <div>William S. Frommer Frommer, Lawrence & Haug LLP 745 Fifth Avenue New York, NY 10151</div>				
EXAMINER				
POND, ROBERT M				
ART UNIT		PAPER NUMBER		
3625				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/936,882

Applicant(s)

KUTARAGI ET AL.

Examiner

Robert M. Pond

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23, 25-34 and 36-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23, 25-34 and 36-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Amendment

Applicants amended claim 1, 9, 16, 20, 22, 25, 29, 34, and 46. All pending claims 1-23, 25-34 and 36-52 were examined in this final office action.

Response to Arguments

Applicant's arguments filed 27 January 2009 have been fully considered but they are not persuasive.

The Examiner notes that Woolston was referenced in the arguments and lacks reference or arguments pertaining to previously cited Yoshioka. The potential subject matter added to certain independent claims does not appear to avoid prior art Yoshioka. Please note additions/clarifications to the rejection under 102(b). Applicants' counsel is welcome to contact this Examiner for further discussion.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-23, 25-34 and 36-52 are rejected under 35 USC 102(b) as being anticipated by Yoshioka (US 5,884,280, IDS 15 September 2001).

Yoshioka teaches all the limitations of claims 1-23, 25-34 and 36-52. For example, Yoshioka discloses a system and methods of distributing proceeds from content (e.g. video/film, musical works, computer program, database) purchased by users of the service. A CD-ROM publisher (i.e. manufacturer) receives an entrustment for publishing the CD-ROMs from the SD Center and mass-produces (note: creating manufactured articles containing purchasable content) the original CD-ROM transferred from the SD Center. The CD-ROM publisher sells the copied CD-ROMs to the user (i.e. acting as a manufacturer and sales agent) or sends the CD-ROMs to the users as registered memberships of the network service company free of charge (i.e. acting as manufacturer for the network service company). See at least col. 6, lines 56-62; col. 9, lines 43-57; col. 13, lines 1-11. Once the CD-ROM is received, the user makes a purchase of one or more contents contained on the CD-ROM. Note: stocked article shipped to the user does not have added value cost (e.g. license fees, royalties and/or distribution fees) given such added value costs are determined and charged after the user makes a purchase selection. See at least col. 13, line 12-col. 15, lines 44. The operator of the distribution system may be an enterpriser or entrepreneur acting as a product distributor for content providers (e.g. performer, author, creator) or other rightful claimants (e.g. copyright owners). See at least abstract; Fig. 2 (21, 22, 23, 24, 27, 28, 31); col. 1-col. 4. Yoshioka further discloses:

- Regarding claim 34. receiving payment corresponding to a selling price for the article, the payment being received by a distributor of the article from a

- buyer of the article; distributor receives payment from the consumer. See at least col. 5, lines 28-42; col. 13, lines 11-50.
- Regarding claim 34. wherein the article has been manufactured prior to receipt of payment; CD-ROM containing content is mass produced by a contracted publisher by the content distribution center (note interpretation: not on demand by consumer purchase but based on completing the content). See at least col. 5, lines 19-27; col. 6, lines 55-62; col. 9, lines 43-57; col. 13, lines 1-11.
 - Regarding claim 34. determining a royalty due to a licensor of the article, based on the selling price of the article; distribution center determines article sales price. See at least col. 5, lines 36-42. distributing shares. See at least Tables 1-4; col. 7, line 34-col. 9, line 22; col. 10, line 18-col. 11, line 8.
 - Regarding claim 34. transmitting, from the distributor to a manufacturer of the article, portions of the selling price payment corresponding to a royalty and a licensee margin portion of the selling price, wherein the manufacturer is a licensee of the article; As noted above, the publisher may be a manufacturer for the network service company or may be a direct seller (i.e. licensee). In either situation, the publisher receives a payment. SD distributes proceeds. The specified distributees may include all of the content providers defined as copyright owners, copyrighters or publishing rightful parties of the contents. Further, the specified

distributees may include copyrighters of original authored works of the contents as well as copyrighters of authored works utilized in the contents. Moreover, the specified distributees may include an author who transferred or assigned the copyright to the content provider by contract in exchange for receiving from the content provider a predetermined royalty for each copy of the content distributed. See at least col. 3, lines 29-39.

- Regarding claim 34. and transmitting, from the licensee to the licensor, payment corresponding to the royalty, upon a sale the article to the customer. distribution center determines article sales price. See at least col. 5, lines 36-42. distributing shares and paying content creators/copyright owners. See at least Fig. 10; Tables 1-4; col. 7, line 34-col. 9, line 22; col. 10, line 18-col. 11, line 8; col. 14, line 46-col. 15, line 44.
- Canceled: claim 35. wherein the article is a computer program affixed to a computer readable medium. CD-ROM medium containing computer program. See at least col. 3, lines 14-18. and wherein the royalty is a format royalty. share/percentage royalty. See at least Table 3; col. 8, lines 59-66.
- Regarding claim 36. The method of claim 35 wherein the licensee is a publisher of the computer program and the licensor is an author of the computer program. publisher and/or distributor are licensees, licensor is the author. Yoshioka: see at least Fig. 2; col. 5, line 43-col. 6, line 21.

- Regarding claim 37. The method of claim 36 wherein the licensee is a publisher of the computer program and the licensor is a format holder associated with the medium upon which the computer program is affixed.
Share/percentage royalty goes to licensor (e.g. author as copyright owner). Yoshioka: see at least Table 3; col. 8, line 59-66.
- Regarding claim 38. The method of claim 36 wherein the royalty portion is determined in relation to the cost price, the cost price comprising a manufacturing cost of the article, the format royalty and the licensee margin. manufacturing cost of the article. See at least col. 1, lines 11-16. the format royalty share percentage to licensor as previously noted, and the licensee margin. rate of money going to the operator. See at least col. 2, line 53-col. 4, line 24.
- Regarding claim 39. The method of claim 38 further comprising the steps of:
 - receiving an article manufacturing cost and a manufactured article quantity, wherein the selling price is determined in relation to the manufacturing cost and an added value including the format royalty; manufacturing cost of the article. manufacturing cost .See at least col. 1, lines 11-16. the format royalty share percentage to licensor as previously noted, and the licensee margin. rate of money going to the operator. See at least col. 2, line 53-col. 4, line 24.

- accepting an order by the customer by receiving ordered article identification information and the manufactured article quantity;
received order and quantity. See at least col. 13, lines 11-29.
- Inherent in Yoshioka are the structures necessary to permit determining a stocked article quantity in relation to the manufactured article quantity and an ordered article quantity; For example, the publisher mass produces a quantity of CD-ROMs with entrusted content (note: establishes a manufactured article quantity). For the situation where the publisher sells directly to the user, the publisher manages manufactured articles which the publisher stocks for distribution to users based on the ordered article from the user.
- and determining a balance of stock in relation to the determined stocked article quantity and the manufacturing cost, wherein the balance of stock is not determined in relation to a consideration corresponding to the added value. As previously noted, manufactured/stocked article shipped to the user does not have added value cost (e.g. license fees/royalties/distribution fees) given such added value costs are determined and charged after the user makes a purchase selection. Balance of stock is not determined in relations to a consideration corresponding to the added value given there is no value added charge to the stocked article. See at least

col. 6, lines 56-62; col. 9, lines 43-57; col. 13, lines 1-col. 15, lines 44.

- Regarding claims 1-23 and 25-33. Rejections are based on the disclosures as noted above. Sales management system, network system, server, user computer, User can be members of a network service company. Regarding claims 24, the preamble implies computer-readable medium but preamble should explicitly incorporate computer-readable medium into the preamble. Royalties/fees paid based on block of articles purchased by user.
- Regarding claims 40-52. Rejections are based on the disclosures as noted above. System means: means for communicating between computing resources.
- Regarding claims 1, 9, 16, 20, 22, 25 and 29. These claims were amended with common subject matter. The both previous and current office action identified subject matter disclosed by Yoshioka in at least col. 10, lines 18-col. 11, line 8. Yoshioka further discloses content IDs, creator IDs, user IDs. Number of articles sold and value added determination.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 571-272-6760. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert M. Pond/
Primary Examiner, Art Unit 3625
April 6, 2009